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** Not admitted in New York*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LANDAU UNIFORMS, INC.,
A Tennessee corporation,

Case No: 1:08-CV-02401(HB)(GG)

Plaintiff,

v.

JBM INTERNATIONAL, LLC,
A New York corporation;
MEDICAL & INDUSTRIAL
UNIFORM MFG, INC., A Texas
corporation; ISAAC WEISER,
individually; and MUSTAFA
EBRAHIM, individually,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION FOR
EXPEDITED DISCOVERY AGAINST JBM INTERNATIONAL, LLC AND ISAAC
WEISER**

TABLE OF CONTENTS

INTRODUCTION.....	3
FACTS.....	3
ARGUMENT.....	5
CONCLUSION.....	6

TABLE OF AUTHORITIES

Federal Cases

1. *Ellsworth Assocs., Inc. v. United States*, 917 F.Supp. 841 (D.D.C. 1996) 3, 5
2. *Optic-Electronic Corp. v. United States*, 683 F.Supp. 269 (D.D.C. 1987) 5

Miscellaneous

1. 8 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus,
Federal Practice & Procedure § 2046.13

INTRODUCTION

Pursuant to Rule 26(d) of the Federal Rules of Civil Procedure, Plaintiff, Landau Uniforms, Inc. (“Landau”), has moved for the entry of an order allowing Landau to take expedited discovery against Defendants JBM INTERNATIONAL, LLC. (“JBM”), and ISAAC WEISER (“Weiser”).

Rule 26(d) authorizes the Court, in its sound discretion, to order expedited discovery for good cause. *See* 8 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice & Procedure* § 2046.1; *Ellsworth Assocs., Inc. v. United States*, 917 F.Supp. 841, 844 (D.D.C. 1996).

FACTS

Plaintiff Landau is a Tennessee corporation with its principal office at 8410 W. Sandidge Rd. Olive Branch, MS 38654. Among other things, Landau is engaged in the business of manufacturing, selling and distributing hospital garments under the federally registered trademarks LANDAU and URBANE SCRUBS (collectively, the “Landau Marks”)¹. Defendant JBM is a New York Limited Liability Company and Defendant Isaac Weiser is a citizen of the State of New York [Verified Complaint ¶¶ 5,6,8] and believed to be the owner of JBM.

¹ Landau has registered the following trademarks with the U.S. Patent and Trademark Office: PTO Registration No. 1345902 and CBP Recordation No. 07-01042 for the LANDAU word mark (drawing code 5 for words/letters in stylized form) including, but not limited to, uniforms, lab coats, pantsuits, smocks, men’s pants, dresses, surgical and/or medical examination gowns, caps and surgical scrub and operating apparel. PTO Registration No. 3048146 and CBP Recordation No. 07-01043, for the URBANE SCRUBS word mark (drawing code 4 for standard character mark) including but not limited to non-surgical scrub shirts and pants, knit tees, pants, tops, warm-up jackets, lab coats, shirts, dresses and skirts. [Verified Complaint ¶¶ 13]

For over fifty years, Landau has sold uniforms and has built its business on long-term relationships with its customers and a dedication to excellence. Since June, 1978, Landau has used the “Landau” trademark in the commerce of the United States on uniforms, lab coats, pantsuits, smocks, men’s pants, dresses, surgical and/or medical examination gowns, caps and surgical scrub and operating apparel. Since March 1, 2002, Landau has used the “Urbane Scrubs” trade mark in the commerce of the United States on non-surgical scrub shirts and pants, knit tees, pants, tops, warm-up jackets, lab coats, shirts, dresses and skirts. [Verified Complaint ¶¶ 10-12]

On or about February 2008, Landau learned through an individual with whom it regularly conducts business that, during a meeting between that contact and defendant Isaac Weiser of JBM International, LLC, Weiser displayed, and was offering to sell, hospital scrubs with labels containing Landau’s trademarks. The garments indicated Egypt as the country of origin, where Landau had been manufacturing merchandise for a number of years through a local company, Alex Apparels (“Alex”). The merchandise offered for sale contained the same style numbers as merchandise that Alex regularly produced for Landau. Weiser represented that he possessed approximately 24,000 pieces of these goods at the time and that another 18,000 pieces were en route. [Verified Complaint ¶¶ 18]

Soon thereafter Weiser called Landau’s contact, indicating that he had sold the original shipment of scrubs and received a second shipment, which, upon information and belief, contains the approximately 18,000 pieces referenced above. [Verified Complaint ¶¶ 19]

Landau has never authorized anyone in the world to sell merchandise bearing the Landau marks and only authorized Alex Apparels to sell the seconds/off-standard merchandise if all labels were cut and those goods were not sold into the commerce of the United States. These

goods, which Weiser was offering for sale, were not offered as seconds or irregulars and did contain labels and Landau Marks. The Verified Complaint seeks remedies for federal counterfeiting and infringement, among other remedies. [Verified Complaint ¶¶ 20]

ARGUMENT

Plaintiff believes that it will need to seek a preliminary injunction to prevent any ongoing infringement. Prior to seeking this relief Plaintiff believes it is in the best interest of all involved for it to take emergency discovery to more fully develop the factual record.

Defendants' use of the Landau Marks, including the importation and/or manufacture, promotion, advertising, distribution, sale and offering for sale of the Counterfeit Goods, is without Landau's consent or authorization.

The facts in this case demonstrate that there is good cause for the commencement of discovery. There is a great risk of irreparable harm if the commencement of discovery is delayed and the discovery will serve to expedite resolution of plaintiff's injunctive claims. *See Ellsworth Assocs., Inc.*, 917 F.Supp. at 844 (granting expedited discovery where the discovery would expedite resolution of plaintiff's injunctive claims). A party's need for timely information constitutes good cause for such expedited discovery. *Optic-Electronic Corp. v. United States*, 683 F.Supp. 269, 271 (D.D.C. 1987) (granting motion for expedited discovery where "[i]t is in the best interest of all parties to have this case resolved as soon as possible").

CERTIFICATE OF SERVICE

I, KENNETH N. WOLF, AS ATTORNEY FOR PLAINTIFF LANDAU UNIFORMS, INC. HEREBY CERTIFY that on **March 27, 2008**, I served a true and correct copy of the foregoing

**MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION FOR
EXPEDITED DISCOVERY AGAINST JBM INTERNATIONAL AND ISAAC WEISER**

upon the below listed parties by depositing, or causing to be deposited, a true copy in a United States mail receptacle properly enclosed in a securely closed envelope postage-prepaid by first class mail addressed to:

Medical & Industrial Uniform Manufacturing, Inc.

41-59 Terminal Street
Houston, Texas 77401

Mustafa Ebrahim

41-59 Terminal Street
Houston, Texas 77401

JBM International, LLC

990 6th Avenue, Apartment 8L
New York, New York 10018

Isaac Weiser

990 6th Avenue, Apartment 8L
New York, New York 10018

_____/s_____
Kenneth N. Wolf